Supreme Court, U.S.
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OFFICE OF THE CLERK

DOCKET NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER 2000 TERM

THOMAS F. PALMER,

Petitioner,

vs.

SUSAN M. BERTRAND,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

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33 pp

I. DID THE GEORGIA SUPREME COURT ERR IN RULING THAT GEORGIA'S STATUTORY SCHEME ALLOWING FOR ACTIONS FOR PATERNITY AND SUPPORT DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION BY CREATING AN IMPROPER GENDER CLASSIFICATION?

II. DID THE GEORGIA SUPREME COURT ERR IN RULING THAT GEORGIA'S PATERNITY STATUTES DO NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION BY IMPROPERLY IMPAIRING A FUNDAMENTAL RIGHT?

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CITATIONS OF THIS CASE

Palmer v. Bertrand, No. S00A1550, 2001WL 50742 (Ga. 2001).

BASIS FOR JURISDICTION

Petitioner seeks this Court to review the decision of the Supreme Court of Georgia dated January 22, 2001, upholding the constitutionality of the Georgia paternity statutes on equal protection grounds, and the subsequent denial by the Supreme Court of Georgia of petitioner's Motion for Reconsideration, said denial having been issued on March 2, 2001. This Petition for Writ of Certiorari is filed within ninety days of the date of denial by the Supreme Court of Georgia of petitioner's Motion for Reconsideration. Petitioner shows that there are compelling reasons for the granting of this Petition for Writ of Certiorari in that the Supreme Court of Georgia has decided an important question of federal law that has not been, but should be, settled by this Court. This Court has jurisdiction to review the decision of the Supreme Court of Georgia pursuant to 28 U.S.C. § 1257(a), in that said decision involves the constitutionality of a Georgia statute. Petitioner shows that, as this Petition for Writ of

Certiorari involves the constitutionality of a Georgia statute, 28 U.S.C. § 2403(b) may apply, and a copy of this Petition has been served on the Attorney General for the State of Georgia.

RELEVANT CONSTITUTIONAL PROVISIONS

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

U.S. CONST. amend. XIV, § 1.

STATEMENT OF CASE

The underlying action was an action for paternity and support. Petitioner herein, Thomas F. Palmer, was the defendant below. Respondent herein, Susan M. Bertrand, was the plaintiff below and the mother of the minor child in issue, Nicholas Ryan

Bertrand. Bertrand was seeking a determination of paternity and an award of child support for her minor child. At the trial level, Palmer filed a Motion to Dismiss Plaintiff's Complaint, contending, in part, that the Georgia statutes allowing an action of paternity and support, O.C.G.A. § 19-7-43 et seq., violated his right to equal protection as guaranteed by the Fourteenth Amendment of the United States Constitution. Immediately prior to the trial of the action, the court below denied on record Palmer's motion to dismiss the complaint on constitutional grounds. The case then was tried to a jury and a verdict returned finding Palmer to be the biological father of Bertrand's child and awarding child support. Palmer's subsequent Motion for New Trial, which included the aforementioned constitutional grounds, was denied, and Palmer ultimately appealed the denials of his Motion to Dismiss and Motion for New Trial to the Supreme Court of Georgia. The Supreme Court of Georgia upheld the rulings of the trial court, finding, in part, that the Georgia paternity statutes do not violate principles of equal protection as guaranteed by the Fourteenth Amendment of the United States Constitution.

ARGUMENT AND CITATION OF AUTHORITIES

I. THE GEORGIA SUPREME COURT ERRED IN RULING THAT GEORGIA'S STATUTORY SCHEME AUTHORIZING ACTIONS FOR PATERNITY AND SUPPORT DID NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION BY CREATING AN IMPROPER GENDER CLASSIFICATION.

The mother in issue brought an action for paternity and child support against petitioner pursuant to the laws of Georgia allowing such an action, O.C.G.A. § 19-7-43 et seq. It is petitioner's contention that these statutes create a gender-based classification, which classification violates the equal protection clause of the United States Constitution. Art. I, § 1, ¶ 2 of the 1983 State of Georgia Constitution provides, in part, that "[n]o person shall be denied the equal protection of the laws." It is been held that the equal protection clause of the Georgia Constitution is substantially equivalent to the equal protection clause of the Fourteenth Amendment of the United States Constitution, which likewise guarantees citizens equal protection of the laws, and that the protections guaranteed therein are coextensive. Suber v.

Bulloch County Bd. Of Educ., 722 F. Supp. 736 (S.D. Ga. 1989); Grissom v. Gleason, 262 Ga. 374, 418 S.E.2d 27 (1992). It is petitioner's contention that the Georgia statutes found at O.C.G.A. § 19-7-43 et seq. allowing an action for paternity and support improperly discriminate against men on the basis of gender and should be struck down as violative of equal protection.

The United States Supreme Court has fashioned three standards generally for determining constitutionality under the equal protection clause of the U.S. Constitution, as follows: (1) The rational relationship test; (2) The intermediate level of scrutiny; and (3) The strict judicial scrutiny standard. According to this Court, gender based classifications fall within the intermediate level of scrutiny and thus demand a heightened level of scrutiny, as opposed to the mere rational relationship test. Frontiero v. Richardson, 411 U.S. 677 (1973). A gender based classification must serve important governmental objectives and must be substantially related to achievement of those objectives to withstand scrutiny under the equal protection clause. Orr v. Orr, 440 U.S. 268 (1979). Such a classification must be "reasonable, not arbitrary, and must rest upon some ground of difference

having a fair and substantial relation to the object of the legislation." Reed v. Reed, 404 U.S. 71, 76 (1971). Additionally, this Court has held that states may not establish classification schemes that perpetuate rigid, out-dated, archaic, and over broad notions of gender role limitations. Craig v. Boren, 429 U.S. 190 (1976).

In a very recent decision the Georgia Supreme Court discussed the heightened scrutiny necessary in gender classification cases and found a Georgia statute, O.C.G.A. § 53-2-4(b)(2), to be in violation of the equal protection clauses of the state and federal constitutions. Specifically that court held, "[g]ender-based classifications are subject to a strong presumption of constitutional invalidity." Rainey v. Chever, 270 Ga. 519, 520, 510 S.E.2d 823 (1999) (citing United States v. Virginia, 518 U.S. 515 (IV), 116 S.Ct. 2264, 135 L.Ed.2d. 735 (1996)). It also held that the "justification for making a gender-based classification proffered by the State must be 'exceedingly persuasive,' genuine, and not hypothesized ... and it 'must not rely on over broad generalizations about the different talents, capacities, or preferences of males and females.'" Id. (citations omitted).

In the present case, petitioner attacks the constitutionality of O.C.G.A. § 19-7-43, and the immediately following statutes up through O.C.G.A. § 19-7-53, which statutory scheme allows for actions for paternity and support. In such an action, upon a finding that the alleged father is the father of the child, "the court shall issue an order designating the alleged father as the father of the child. The sole effect of the order shall be to establish the duty of the father to support the child." O.C.G.A. § 19-7-49(a). In addition to child support, the court may order the father to pay costs of the mother's pregnancy, child birth costs, genetic testing costs, as well as the fees of opposing counsel and any experts or guardian ad litem involved in the action. O.C.G.A. §§ 19-7-49(c), 19-7-50.

A judgment in a paternity action declaring a man to be the father, however, does not grant any parental rights to the man. As specified in the statute, it only establishes the man's duty to support the child. The father must then, at his own expense, file an action to legitimate the child, pursuant to O.C.G.A. § 19-7-22, in order to obtain any custodial or visitations rights to the child. Even upon filing a petition to legitimate, the father is not

guaranteed any absolute parental rights to the child. The court may, under certain circumstances, deny a grant of legitimation even where paternity has been demonstrated, thus creating a situation where a father may be ordered to support a child in which he has no parental rights. In Mabry v. Tadlock, 157 Ga. App. 257, 277 S.E.2d 688 (1981), the Court of Appeals of Georgia upheld such a refusal to grant legitimation. It stated that a father has no absolute right to the grant of legitimacy, but his duty to support his minor children is the same, whether the children are legitimate or illegitimate. Furthermore, various decisions of the United States Supreme Court seem to support the conclusion that a biological father only possesses an opportunity interest to develop a relationship with a child born out of wedlock, and such a father may be denied the right to legitimate if he does not timely and diligently pursue such interest. See In re Baby Girl Eason, 257 Ga. 292, 358 S.E.2d 459 (1987) (discussing Stanley v. Illinois, 405 U.S. 645 (1972); Quilloin v. Walcott, 434 U.S. 246 (1978); Caban v. Mohammed, 441 U.S. 380 (1978); Lehr v. Robertson, 463 U.S. 248 (1982)).

The Georgia paternity statutes, when viewed in light of the

Georgia legitimation statutes, clearly create an unconstitutional gender classification. A man may be ordered to pay support for a child in whom he cannot obtain any parental rights. A woman in Georgia, likewise, may bring a paternity action and get an award of child support, as well as an award for costs of pregnancy and child birth, blood tests costs, and attorneys fees, and still object to legitimation and retain the sole parental rights to the child. A woman who bears a child in Georgia automatically enjoys full custodial and parental rights in the child along with her duty to support. However, a man in Georgia who impregnates a woman to whom he is not married enjoys no such rights, but may still be compelled by legal procedure to pay for the support of the child.

It is petitioner's belief that this statutory scheme, which clearly discriminates based on gender, cannot withstand the intermediate level of scrutiny test which must be applied in an equal protection analysis. Again, the classification must further an important governmental objective and the discriminatory means employed must be substantially related to the achievement of those governmental objectives in order for the classification not to violate equal protection. Franklin v. Hill, 264 Ga. 302, 444 S.E.2d

778 (1994). Petitioner presumes that the state of Georgia would proffer as its stated objective its interest in encouraging fathers to take responsibility for children born out of wedlock, which on its face may appear to be a sound, benign objective. However, this Court has held that "the mere recitation of a benign, compensatory purpose is not an automatic shield which protects against any inquiry into the actual purposes underling a statutory scheme." Weinberger v. Wiesenfeld, 420 U.S. 636, 648 (1985). Furthermore, the state should have an equally important interest in encouraging mothers to take responsibility for children born out of wedlock, children whom the mothers alone choose to carry to term without any input on that choice from the fathers of the children. The Georgia Supreme Court has rejected the argument that "mothers are less likely than fathers to abandon children born out of wedlock as reliant on stereotypes and over broad generalizations." Rainey, 270 Ga. at 520. That court held that O.C.G.A. § 53-2-4(b)(2), which states that only fathers of children born out of wedlock must openly treat the child as their own and provide support for the child in order to inherit from the child, violates the equal protection clauses of the state and federal

constitutions. It found no "exceedingly persuasive" justification for treating the inheritance rights of mothers and fathers of children born out of wedlock differently. Rainey, 270 Ga. at 521. This case highlights the heightened scrutiny required for a constitutional analysis when a statute creates a gender-based classification.

Fathers in the state of Georgia can be compelled to support children born out of wedlock all without the corresponding parental rights afforded to mothers of children born out of wedlock, and this gender-based classification clearly is violative of equal protection. It was error for the trial court to deny petitioner Palmer's Motion to Dismiss Complaint and Motion for New Trial on this constitutional ground and further error for the Supreme Court of Georgia to uphold these rulings of the lower court.

II. THE GEORGIA SUPREME COURT ERRED IN FINDING THAT THE PATERNITY STATUTES OF GEORGIA DO NOT VIOLATE EQUAL PROTECTION BY IMPROPERLY IMPAIRING A FUNDAMENTAL RIGHT.

Females in the state of Georgia have a well defined right of reproductive privacy to choose when and with whom to conceive a child. After conception, females have the choice of deciding whether to keep the pregnancy and bear the child or to terminate the pregnancy. This choice has been constitutionally protected for some time now. Roe v. Wade, 410 U.S. 113 (1973). Legislation impinging on this choice is subject to strict scrutiny by the courts. Planned Parenthood Assoc. of the Atlanta Area, Inc. v. Miller, 934 F.2d 1462 (11th Cir. 1991). Men in Georgia enjoy no such right and their legal duty may be determined by the decision of a woman, a decision in which the law does not grant the man input. Since a female has a fundamental right to avoid biological or legal parenthood, by the same logic a male should have the same fundamental right of parental, family, marital, reproductive, procreative and personal privacy to avoid parenthood. The Georgia paternity statutes allow for no such choice.

This Court has recognized to some extent the rights of men to reproductive, family, and personal privacy choices. See generally Eisenstadt v. Baird, 405 U.S. 438 (1971); Carey v. Population Services International, 431 U.S. 678 (1977); Planned Parenthood v.

Casey, 505 U.S. 833 (1992); Stanley v. Illinois, 405 U.S. 645 (1972); Zablocki v. Redhail, 434 U.S. 374 (1978). Petitioner contends he has a fundamental right to such reproductive, family, and personal privacy choices, but the Georgia paternity statutes are in direct contravention to his rights.

When there is an impairment of a fundamental right, the courts must impose the strict scrutiny test in deciding if the statute violates equal protection. Clark v. Jeter, 486 U.S. 456 (1988). Applying this standard, "the governmental classification will fail unless the government demonstrates that the classification is necessarily related to a compelling governmental objective." McDaniel v. Thomas, 248 Ga. 632, 639, 285 S.E.2d 156 (1981). The state has the almost impossible burden of showing a narrowly drawn, compelling state interest advanced by the least restrictive means. Petitioner would reallege the authority and arguments set forth in the prior section of this petition and show that, since the state's interest would not meet the intermediate level of scrutiny, it certainly would fail the more demanding strict scrutiny test. For this reason, the trial court erred in denying petitioner Palmer's Motion to Dismiss Complaint and Motion for New Trial

on constitutional grounds, and the Georgia Supreme Court erred in upholding these rulings of the lower court.

In conclusion, petitioner Thomas Palmer requests that this Court grant his Petition for Writ of Certiorari to address the issues set forth herein.

APPENDIX

I. Order Denying Motion for New Trial

II. Opinion of the Supreme Court of Georgia, S00A1550, Palmer v. Bertrand, decided January 22, 2001

III. Denial of Motion for Reconsideration by the Supreme Court of Georgia, dated March 2, 2001

IV. U.S. CONST. amend. XIV

V. Defendant's Motion to Dismiss Plaintiff's Complaint

VI. Motion for New Trial

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SUPERIOR COURT OF

BIBB COUNTY, GEORGIA

s/Melanie G. Burnette

IN THE SUPERIOR COURT OF BIBB COUNTY

STATE OF GEORGIA

SUSAN M. BERTRAND,	*	
Plaintiff,	*	
vs.	*	Civil Action No. 97-CV-15498
THOMAS FRANKLIN PALMER,	*	
Defendant.	*	

ORDER DENYING MOTION FOR A NEW TRIAL

The above-styled matter having come before the Court on July 29, 1999, for the purpose of a hearing regarding the Defendant's Motion for a New Trial, and after hearing argument from each party's respective counsel of record, the Defendant's Motion for New Trial is hereby DENIED.

So ordered this 11 day of August, 1999.

s/ Martha C Christian

Martha C. Christian

Judge, Macon Judicial Circuit

Order prepared by:

JOHN L. STRAUSS

State Bar No. 686854

Attorney for Plaintiff

P. O. Box 1797

Macon, GA 31202-1797

In the Supreme Court of Georgia

Decided JAN 22, 2001

S00A1550. PALMER v. BERTRAND

CARLEY, Justice.

Susan Bertrand brought this action to establish that Thomas Palmer is the father of her child and to obtain an award of child support. Palmer moved to dismiss the complaint on the ground that the statutory scheme for paternity actions set forth in OCGA § 19-7-43 et seq. is unconstitutional. The case proceeded to trial and the jury returned a verdict in favor of Ms. Bertrand. The trial court entered judgment on the jury's verdict, and Palmer filed a motion for new trial asserting, in part, that the trial court erred in denying the motion to dismiss on constitutional grounds. The trial court denied the motion for new trial, and we granted this discretionary appeal to consider whether the paternity statutes violate principles of equal protection. Because fathers and mothers of illegitimate children are not similarly situated, and the paternity statutes actually decrease the effect of the inherent differences between the parents' respective circumstances, we conclude that Georgia's statutory paternity scheme does not violate equal protection.

Palmer contends that the paternity statutes create an improper gender-based classification that permits a male to be adjudged to be the father of a child and ordered to make corresponding child support payments, without according him the same parental rights which automatically enure to the mother of that same child.

"In cases where men and women are not similarly situated ..., and a statutory classification is realistically based upon the differences in their situations, [the Supreme Court of the United States] has upheld its validity." Parham v. Hughes, 441 U.S. 347, 354 (III) (B) (99 SC 1742, 60 LE2d 269) (1979). "Because of significant circumstantial differences between unwed fathers and unwed mothers, it is permissible for the [l]egislature to focus statutory attention exclusively on the fathers of illegitimate children. Our paternity statutes were enacted to deal with the problem of defaulting fathers. [Cit.]" Commonwealth v. MacKenzie, 33 NE2d 613, 617 (Mass. 1975). The different statutory treatment of men and women does not reflect "archaic and overbroad generalizations, but, instead, the demonstrable fact that male and female ... (parents of illegitimate children) are not similarly situated ...'" (Emphasis in original.) Commonwealth v. MacKenzie, supra at 616.

The paternity statutes recognize the intrinsic differences in the circumstances of fathers and mothers of illegitimate children. Indeed, such statutes have eliminated the gender-based discrimination of the common law, which placed a duty of support on the mother, but not on the father. Commonwealth v. MacKenzie, supra at 616. The very purpose o those statutes is to establish the father's duty of child support. OCGA § 19-7-49(a). Because the determination of paternity is only incidental to this purpose, there is no merit to Palmer's claim that the paternity statutes discriminate on their face because fathers cannot sue to establish parental rights under the terms of the act. See Waldeck v. Piner, 488 A2d 1218, 1221 (R.I. 1985). By acknowledging the child as his own and filing a counterclaim for legitimation, the father can achieve the same benefits as the mother, but without the extensive litigation that mothers must often undertake in order to procure child support. See Waldeck v. Piner, supra.

Rainey v. Chever, 270 GA. 519 (510 SE2d 823) (1999) is distinguishable. In that case, we struck down an inheritance statute which made child support a precondition for inheriting from the child in the case of the father, but not the mother. The paternity statutes, on the other hand, simply impose the same

obligation on the father that the mother already has and, by utilizing the statutory procedure for legitimation, he can obtain the same rights as the mother.

Accordingly, the trial court correctly denied Palmer's motion to dismiss the complaint on constitutional grounds.

Judgment affirmed. All the Justices concur.

SUPREME COURT OF GEORGIA

Case No. S00A1550 **Atlanta, March 2, 2001**

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

THOMAS FRANCIS PALMER v. SUSAN M. BERTRAND

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia. Witness my signature and the seal of said court hereto affixed the day and year last above written.

Sherie M. Welch, Clerk

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

U.S. CONST. amend. XIV, § 1.

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SUPERIOR COURT OF

BIBB COUNTY, GEORGIA

s/Claudia Odom

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

SUSAN M. BERTRAND, :

Plaintiff, :

v. : CIVIL ACTION NO. 97-CV-15498

THOMAS FRANKLIN PALMER,

Defendant. :

DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

COMES NOW THOMAS FRANKLIN PALMER, Defendant above, and files this, his Motion to Dismiss Plaintiff's Complaint, and in support of same shows this Honorable Court as follows:

1.

The plaintiff above brought the present action to establish paternity and support in this Court on May 15, 1997.

2.

Said action to establish paternity and support violates the defendant's right to equal protection of the law as guaranteed by the Fourteenth Amendment of the United State Constitution and by Article I, Section I, Paragraph II of the 1983 Constitution of the State of Georgia.

3.

The statutes allowing an action for paternity and support, O.C.G.A. 19-7-43 et seq., create a gender-based classification, as only males are subject to said action, and are therefore discriminatory on their face.

4.

Females in the State of Georgia may, having been impregnated, make a choice as to whether or not to bear a child. Said choice is, within certain confines, constitutionally protected. Roe v. Wade, 93 S.Ct. 755, 410 U.S. 179, 35 L.E.2d 147 (1973). Legislation impinging on said choice is subject to strict scrutiny by the Courts. Planned Parenthood Ass'n of the Atlanta Area, Inc. v. Miller, 934 F2d 1462 (11th Circuit 1991). A woman's duty to support a child is tempered by her right not to bear said child.

Men enjoy no such right and their legal duty may be determined by the decision of a woman, a decision in which the law does (sic) grant the man input. Further, a woman who bears a child automatically enjoys full custodial and parental rights in said child along with her duty of support, yet a man who impregnates a woman to whom he is not married enjoys no such rights, but may still be compelled by legal procedure to pay for the support of said child. O.C.G.A. 19-7-24, 19-7-25.

6.

In order to obtain parental rights the biological father must incur the expense of filing a Petition to Legitimate under O.C.G.A. 19-7-22. A judgment in a paternity action declaring a man to the father of a particular child does not grant parental rights to the man, he must institute a separate proceeding.

7.

Even a Petition to Legitimate under O.C.G.A. 19-7-22 does not provide an absolute grant of parental rights to a father; the Court may, under certain circumstances, deny a grant of legitimation even where paternity has been demonstrated. Mabry v. Tadlock, 157 GA. App. 257, 277 S.E.2d 688 (1981). Needless to say, such a

denial of parental rights would not relieve the biological father of the duty of support.

8.

Such discrimination against biological fathers is oppressive and unduly burdensome. Biological fathers are penalized based upon decisions upon which the mother, but not the father, has absolute control. Fathers are compelled by law to support children without the corresponding parental rights enjoyed by mothers.

For these and the above stated reasons, Defendant respectfully requests that this Court hold that actions to establish paternity and support, as presently contemplated by Georgia law, violate the equal protection provisions of the state and federal constitutions and that, therefore, the Court dismiss the present action with prejudice.

This 27 day of May, 1998.

s/Philip T. Raymond

Philip T. Raymond

Attorney for Defendant

CERTIFICATE OF SERVICE

This is to certify that I have this date served a true and exact

copy of the foregoing upon Mr. John L. Strauss, Attorney of Record for the plaintiff, by hand delivery to his correct office address of 1150 Liberty Tower, Macon, Georgia 31202-1797.

This 27 day of May, 1998.

s/Philip T. Raymond

Of Counsel

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1998 OCT 9 AM 11:58

SUPERIOR COURT OF

BIBB COUNTY, GEORGIA

s/Claudia Odom

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

SUSAN M. BERTRAND, : CIVIL ACTION 97-CV-15498

Plaintiff, :

vs. : MOTION FOR NEW TRIAL

THOMAS FRANCIS PALMER, :

Defendant. :

COMES NOW, THOMAS FRANCIS PALMER, defendant in the above styled action and moves the Court to set aside the Judgment As To Paternity and Child Support entered herein on September 9, 1998, and to grant a new trial on the following grounds:

(1) The Order is contrary to law.

(2) The Order is contrary to the evidence.

(3) The Order is strongly against the weight of the evidence.

(4) The Court erred in denying Defendant's Motion to Dismiss

Plaintiff's Complaint on constitutional grounds.

(5) At trial, the Court erred in prohibiting the defendant from introducing evidence regarding the prior birth of another child out of wedlock to a man whose identity is unknown to her.

(6) At trial, the Court erred in prohibiting the defendant from introducing evidence regarding the plaintiff's past reputation for promiscuity.

(7) The Court erred in denying the defendant's request to bifurcate the issues of paternity and child support.

The defendant reserves the right to amend this Motion to include other grounds which may be appropriate upon a review of the trial transcript.

By: s/Philip T. Raymond, III

Philip T. Raymond, III

State Bar No. 596850

P. O. Box 1935

Macon, Georgia 31202-1935

(912) 743-9519

CERTIFICATE OF SERVICE

This is to certify that I have served a true and exact copy of the foregoing document upon Mr. John L. Strauss, attorney of record

for the plaintiff, by sending him a copy at his correct office address of P.O. Box 1797, Macon, Georgia 31201, through the U.S. Mail, with sufficient postage thereon to insure delivery.

This 9th day of October, 1998.

s/Philip T. Raymond

Of Counsel

RESPECTFULLY SUBMITTED BY:

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